

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JOSEPH WELTY,)
)
Plaintiff,) Civil Action No. 21-765
)
v.)
) District Judge W. Scott Hardy
) Chief Magistrate Judge Cynthia Reed Eddy
MESH COMPANY and)
DR. BRENT ANGOTT,)
)
Defendants.)

MEMORANDUM ORDER

This matter comes before the Court on Plaintiff's Objections (Docket No. 21) to the Report & Recommendation ("R&R") (Docket No. 16) of Chief Magistrate Judge Cynthia Reed Eddy, entered on October 4, 2021. The R&R recommends that the Amended Complaint in this case be dismissed pre-service *sua sponte* for failure to state a claim upon which relief can be granted and that leave to amend not be granted as any amendment would be futile. The R&R was sent to Plaintiff via U.S. Mail. After requesting and receiving from the Court an extension of time in which to file his Objections, Plaintiff filed timely Objections to the R&R on November 15, 2021. (Docket No. 21). Since that time, Plaintiff has sent correspondence to the Court, which the Court is treating as amendments to his Objections. (Docket Nos. 25, 26, 27, 29, 31, 32, 33, 34, 35).¹

¹ Additionally, on June 13, 2022, Plaintiff filed a document that purports to be a motion expressing his wish to drop the present lawsuit against both Defendants. (Docket No. 36 (stating below the caption, "I would like to Drop this Lawsuit against DR. Brent Angott and the Mesh Company please?")). Because the Court is adopting the R&R and dismissing Plaintiff's Amended Complaint, as discussed herein, Plaintiff's motion shall be denied as moot.

Plaintiff objects to the recommendation that the Court dismiss his Amended Complaint, which purports to state an Eighth Amendment claim for deliberate indifference to his serious medical needs stemming from the treatment/surgery of a hernia sometime in 2018 or 2019 at Washington County Hospital. According to Plaintiff, the Court should reject the recommendation that Plaintiff's Amended Complaint be dismissed because, unlike Judge Eddy, the Court should find that Defendant Dr. Brent Angott is a state actor, that Plaintiff has adequately pled facts showing deliberate indifference on the part of Dr. Angott, that Plaintiff has shown diversity among the parties, and that Plaintiff has pled allegations against Defendant the Mesh Company.

In resolving a party's objections, the Court conducts a *de novo* review of any part of the R&R that has been properly objected to. *See* Fed. R. Civ. P. 72(b)(3); 28 U.S.C. § 636(b)(1). The Court may accept, reject, or modify the recommended disposition, as well as receive further evidence or return the matter to the magistrate judge with instructions. *See id.* Upon careful *de novo* review of Plaintiff's Amended Complaint, the R&R, Plaintiff's Objections to the R&R, and the correspondence Plaintiff has sent to the Court, the Court concludes that Plaintiff's Objections do not undermine the R&R's recommended disposition. In so finding, the Court notes that, as is necessary to bring a claim for a violation of Plaintiff's constitutional rights under 42 U.S.C. § 1983, the Amended Complaint does not contain factual allegations showing that the Mesh Company is a state actor or, even assuming that Dr. Angott is a state actor, allegations sufficient to state a *prima facie* deliberate indifference claim against him. Additionally, assuming that Plaintiff's claims are based on state law, Plaintiff has not shown that the Court has original jurisdiction by including factual allegations showing complete diversity among the parties. *See* 28 U.S.C. § 1332. Thus, the Court agrees with Judge Eddy's conclusions that Plaintiff has not stated a claim upon which

relief can be granted, and that further amendment is futile since Plaintiff was previously given the opportunity to amend his Complaint but he failed to make an effort to include facts demonstrating that this Court has jurisdiction over his claims. Accordingly, the Court enters the following Order:

AND NOW, this 7th day of September, 2022,

IT IS HEREBY ORDERED that Plaintiff's Objections to the R&R (Docket No. 21) are OVERRULED, and the R&R (Docket No. 16) is ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that Plaintiff's Amended Complaint is DISMISSED WITH PREJUDICE for the reasons set forth in the R&R.

IT IS FURTHER ORDERED that Plaintiff's Motion purportedly asking to drop this lawsuit (Docket No. 36) is DENIED AS MOOT.

IT IS FURTHER ORDERED that the Clerk of Court shall mark this case CLOSED.

s/ W. Scott Hardy
W. Scott Hardy
United States District Judge

cc/ecf: All counsel of record
Joseph Welty (via U.S. Mail)